IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1191 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIMAL M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MIHIR H JOSHI for Petitioner
MS BR GAJJAR AGP for Respondent No. 1
MR UTPAL M PANCHAL for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/03/2001

ORAL JUDGEMENT

Rule. Ms. B.R. Gajjar appears and waives service of notice of Rule on behalf of the respondent no. 1. Mr. U.M. Panchal also apepars and waives service of

notice of Rule on behalf of the respondent no. 2.

2. This petition has been filed for quashing and setting aside the order dated 10-2-2000 passed by the respondent no. 2 at Annexure-A and for direction to the respondent no. 3 to make correction of the entry No. 7434 dated 19-5-1997 by correcting the name from "Hemali" to "Heena"

3. The child was born to the petitioner on 13-5-1997 and the application was given on 2-7-1997 by the petitioner to the respondent no. 2 for entering the name of the child of the petitioner in the Birth Register Accordingly, the name of the child was mentioned as "Hemali" in the Birth and Death Register vide entry No.7434 dated 19-5-1997. When the petitioner required birth certificate for filing it in the educational institution at that time the mistake was detected in respect of name of his female child "Hemali" instead of "Heena". Therefore, the petitioner moved an application dated 23-1-2001 for making correction in the entry No. 7434 dated 19-5-1997 made in the Birth and Death Register for correcting the name from "Hemali" to "Heena".

4. The respondent no. 2 has rejected the application vide order dated 12-2-2001 basing on some circular issued by the department concerned. Hence, this petition.

5. Learned counsel for the petitioner submitted that under Section 15 of Registration of Births and Deaths Act, 1969 and Rule 12 of Registration of Births and Deaths Rules, 1973 the respondent no. 2 has power to make correction of entry in the Birth and Death Register with regard to the the name of the child of the petitioner. He has relied on the decision of the Division Bench of this Court in the case of Mulla Faizal @ Fazilabanu Suleman Ibrahim Vs. State of Gujarat and others, reported in 2000 (2) G.L.H. 1, wherein the Division Bench of this Court has held, as under :

> "The provisions of Section 15 of the Act clearly permit correction of an entry in the Register of Births if it is found to be "erroneous in form or substance or has been improperly made."

6. Learned counsel for the petitioner has also relied on the decision of this Court in the case of Dr. Sukumar Mehta Vs. District Registrar, Births & Deaths, reported in 1993 (1) G.L.R., wherein it has been held that the Act is silent about the contingency for

subsequent correction of entry already made in Birth Register by correcting the name of the child at the instance of the parents. It is also held by this Court in the said decision that there is power vested with the Registrar to correct the entry already made by entertaining the application of the parents and in that case the respondent was directed to entertain the application of the petitioner by accepting the same and to amend the entry in the Birth Register by amending the name of the female child of the petitioner from that of "Suchi" to "Prachi" and to initial such entry after correcting the name.

7. On the contrary, the learned A.G.P. contended that under the provisions of Section 15 of the aforesaid Registraion of Birth and Deaths Act, 1969 the respondent has power to make correction in the Register of Births and Deaths in two contingencies, where some error has been committed on the part of the registration office or the entry has been made fraudulently and improperly. He has also relied on one query mentioned in the Handbook on Civil Registration and Query No. 69 is whether the correction or cancellation of entries in births/deaths registers under Section 15 of the Act also covers change of name ? A clarification has been made regarding the question of change of name would cover such case where a person changes his name and thereafter makes request for change of name of the child in the register. Such contingency is obviously not covered under Section 15 of the aforesaid Act.

8. The contention of the learned counsel for the petitioner is that Section 15 of the aforesaid Registration of Births and Deaths Act, 1969 empowers competent authority to make correction in respect of mistake or error where some entry has been made fraudulently or improperly and that could be made in accordance with law. Under Rule 12 (4) of the Registration of Births and Deaths Rules, 1969, if any person asserts that any entry in the Register of Births and Deaths is erroneous in substance, the Registrar concerned may correct the entry in the manner prescribed under Section 15 upon production by the person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

9. I have carefully considered the contentions of the learned counsel for the parties and relevant papers on the record as well as the affidavit-in-reply filed by the respondents.

10. It appears from the decision of this Court reported in 2001 (2) G.L.R. 1, that the Registrar has power to make necessary correction in the entries made in the Register of Births and Deaths they are not erroneous in the form or substance or fraudulently or improperly made in that case this Court directed the authority to make inquiry within a reasonable time and pass consequential order of granting change in the entry regarding the sex in the Register of Births and Deaths and issue certificate of such entry to the entry. This Court has also held that the Act is silent about the contingency for subsequent correction of entry already made in Birth Register by correcting the name of the child at the instance of the parents and the relevant paragraphs no. 4 of the said decision reads, as under :

"4 - In my opinion, the Act is silent about the contingency for subsequent correction of entry already made in the Birth Register by correcting the name of the child at the instance of the parents. This is the case of unmindful legislative omission. This is classic case of casus omissi, i.e. circumstances concerning which an Act is silent. The question is how to deal with such contingencies ? Should the Court leave the litigant in sheer helpless condition asking him to wait till the legislature curds the defect by providing for the omission ? Can the Court escape the responsibility of considering these unforeseen contingencies ? However, I cannot ignore the modern tendency in Courts to take the view that if a case is entirely unprovided for by a Statute, either directly or indirectly, then it must remain nobody's child a luckless orphan of the law (In re Leicester Permanent Building Society, 1942 Ch. 340). Same was the view of Devlin L.J. in Gladstone V. Bower, reported in 1960 (2) QB 384 when he observed "we cannot legislate for casus omiss". This tendency has given rise to inconvenient results. One option left for me is to express regrets for a statutory lacuna and to hope that it will be remedied by legislation and occasionally the hope is fulfilled, even if tardly. However, in my opinion, in this case there is "impalpable line" of distinction which should enable the Court to come out of helplessness. In this case the caption of Sec. 15 gives general indication to give power to correct the entry in the Birth Register.

However, specific case of correction of name of the child already entered is omitted to be provided for. When the entry is erroneous, there is power to correct. When it is factually improperly made, there is power of correction. Question is when entry is rightfully made, can it be corrected by resort to this power ? In my opinion, once power to correct an entry already made in the Birth Register is conceded, it should legitimately take within its sweep the correction of entries rightfully made. It is the correction of the name of the child at the instance of the parents or wards. What possible objections can there be in reading such power in the authority if power to correct erroneous entry is conceded ? The omission in the present case appears to be non-deliberate. In my opinion, omission being not deliberate and not supported by cogent reasons it would not be hazardous to read "implied will of the Legislators" in this provision so as to authorise the Registrar to correct the name of the child at the instance of the parents. I, therefore, hold that there is power in the Registrar to correct the entry already made by entertaining the application of the parents. In undertaking this exercise, I am reminded of what C.K. Allen said in his book "Law in the Making".

"Judges must and do carry out the express will of the language as faithfully as they can, but there is a wide margin in almost every statute where the Courts cannot be said to be following any will except their own. The statute then becomes, as to great part of it, not a direct "command" but simply part of the social and legal material which judges have to handle according to their customary process of judicial logic."

11. The contention of the learned counsel for the petitioner is that some error fraudulently or improperly in giving the name of the child then the Registrar is required to correct the same in accordance with law under the provisions of Rule 12 (4) of the aforesaid Rules. The relevant circular also makes it clear that the second aspect is covered such cases where the person changes his name and thereafter makes a request for change in the name in the register also.

12. I have considered the aspects where a person adopts an another religion and names of self and children

are required to be changed according to the religion, though entries made in Birth & Death Register were correct. But due to change of religion these entries regarding names would not remain proper and if he applies for change of entries in respect of names, the Registrar of Birth and Death cannot refuse to entertain an application therefor. However, he is entitled to hold an inquiry for this purpose, on the basis of material on record he is not powerless to make correct entries. Even the name of a child is substantially changed, on the basis of the required material the Registrar is entrusted with the powers to change entry regarding the name in the concerned Register.

13. In the present case, there is bona-fide mistake on the part of the petitioner regarding name of his child and that mistake is only error in the form and that can be corrected by the Registrar - respondent no. 2.

14. In the facts and circumstances of this case, the petition deserves to be allowed. Accordingly, this petition is allowed and the order dated 10-2-2000 passed by the respondent no. 2 is set aside. The Respondent no. 2 is directed to entertain the application of the petitioner by accepting the same and to amend the entry made in the register by amending the name of female child of the petitioner from "Hemali" to "Heena" and to initial such entry after correcting the name within a one month from the date of presentation of a certified copy of this order or writ of this Court whichever is earlier. The application made by the petitioner' has been rejected as not entertained. Rule is made absolute, with no order as to costs.

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/JVSatwara/